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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,731	10/25/2006	Stefan Leyen	DNAG-310	1384
24972	7590	06/19/2008		
FULBRIGHT & JAWORSKI, LLP			EXAMINER	
666 FIFTH AVE			STEWART, JASON-DENNIS NEILKEN	
NEW YORK, NY 10103-3198				
			ART UNIT	PAPER NUMBER
			3738	
			MAIL DATE	DELIVERY MODE
			06/19/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/549,731

Applicant(s)

LEYEN ET AL.

Examiner

JASON-DENNIS STEWART

Art Unit

3738

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The following is a Final Office action in response to communications received on 03/05/08. Claims 13-24 have been cancelled. Claims 25-34 have been added. Therefore, Claims 25-34 are pending and addressed below.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 25-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 25 recites the limitations "the notch base" and "the notch radius" in line 6 of the claim. There is insufficient antecedent basis for these limitations in the claim. Is the structural formation intended to be a notch?

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 25-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunz et al. WO 01/05338 in view of Pope et al. (6,676,704).

4. Regarding Claims 25-28, Bunz discloses a hip joint prosthesis comprising an inner sliding cup made of ceramic material that is surrounded on its outside by a plastic covering (abstract). The language regarding the ball head and shaft are intended use limitations and are not given patentable weight by the examiner.

However, Bunz does not disclose surface semicircular depressions with a notch radius of more than .5mm arranged circumferentially on the outside of the sliding cup.

Pope discloses a substrate for attachment to a femoral head and an acetabular comprising of spherical segment depressions with a diameter from .001 in. up to .750 in. (col. 43, ll. 15-35), undulating in section, and circumferentially arranged (fig. 3c) for the purpose of creating a mechanical interlock between adjacent layers of the hip prosthesis (col. 41, ll. 23-25).

It would have been obvious to one of ordinary skill in the art at the time of the invention combine the sliding cup of the sandwich insert of Bunz with the undulating depressions of Pope in order to achieve a mechanical interlock as taught by Pope (col. 41, ll. 23-25).

5. Regarding Claim 29, Bunz illustrates a sliding cup (1) having a stepped structural form on its outside (fig. 2).

6. Regarding Claim 30, Bunz illustrates the plastic covering embracing the sliding cup at its pin end (fig. 2).

7. Regarding Claim 31, Bunz illustrates a collar of the plastic covering 5 that rests on the upper side of the sliding cup and covers almost half of the upper edge (fig. 2).

8. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bunz et al. WO 01/05338 in view of Pope et al. '704 and further in view of Teinturier (5,041,140).

Bunz in view of Pope discloses the invention as claimed and as discussed above. However, Bunz in view of Pope does not disclose a press fit between the sliding cup and the plastic covering.

Teinturier teaches a press fit between a plastic cup 42 and a metal shell in order to allow the acetabulum unit to adapt to deformations of the skeleton and adapt to them (col. 4, ll. 59-62).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sliding cup of Bunz in view of Pope by press fitting it into the plastic covering as taught by Teinturier in order to allow for deformation of the skeleton by the hip prosthesis.

9. Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunz et al. WO 01/05338 in view in view of Pope et al. '704 and further in view of McLean et al. 2004/0054418.

10. Regarding Claim 33, Bunz in view of Pope discloses the invention as claimed and as discussed above. However, Bunz as modified by Pope do not disclose an eccentric relationship between the inner and outer form of the sliding cup.

McLean et al. discloses an eccentric relationship between the inner surface 30 and the outer surface 26 of an articulating surface shell in order to improve migration and other properties of the prosthesis.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sliding cup of Bunz in view of Pope with the eccentric relationship of McLean in order to optimize articulating wear properties of the sliding cup relative to the femoral head.

11. Regarding Claim 34, Bunz in view Pope and further in view of McLean discloses the invention as claimed and discussed above, however Bunz does not positively recite the range claimed in Claim 34. It has been held that "the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages." *In re Peterson*, see MPEP 2144.05, Part II, section A.

Response to Arguments

12. Applicant's arguments with respect to claims 25-34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON-DENNIS STEWART whose telephone number is (571)270-3080. The examiner can normally be reached on M-F (alt Fridays off) 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571)272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JS
/Jason-Dennis Stewart/
Examiner, Art Unit 3738

/Brian E Pellegrino/
Primary Examiner, Art Unit 3738